

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHARLES ROBINSON,

Plaintiff,

v.

LESLIE SZIEBERT,

Defendant.

CASE NO. 3:15-CV-05555-RJB-DWC

ORDER ON PLAINTIFF'S MOTION  
FOR AN EXTENSION OF TIME TO  
COMPLETE DISCOVERY AND ON  
PLAINTIFF'S MOTION TO COMPEL  
DISCOVERY

The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United States Magistrate Judge David W. Christel. Before the Court is Plaintiff's Motion for Extension of Time (Dkt. 56) and Plaintiff's Motion to Compel Discovery (Dkt. 57).

**I. Motion to Compel Discovery**

Plaintiff is a civilly-committed detainee at the Washington State Special Commitment Center ("SCC"). Dkt. 6, p. 1, ¶ 8.2. As Plaintiff is involuntarily committed at the SCC, Plaintiff is unable to leave the confines of the SCC to conduct discovery. Plaintiff alleges he is unable to afford a court reporter to transcribe any depositions. Dkt. 57, p. 3. Plaintiff also alleges he is

1 | unable to record the audio from any deposition he were to take, as SCC residents are prohibited  
 2 | from owning or otherwise having access to audio recording devices. Dkt. 57, p. 3. Plaintiff has  
 3 | moved for an order pursuant to Rule 37 of the Federal Rules of Civil Procedure: 1) requesting to  
 4 | depose Defendant Leslie Sziebert and non-party Galina Dixon;<sup>1</sup> and 2) “grant[ing] permission”  
 5 | for Plaintiff to bring a recording device into the SCC in order to record the depositions of  
 6 | Defendant Sziebert and Dixon. Dkt. 57, p. 4.<sup>2</sup>

7 | First, under Rule 37, a party may move to compel a deponent to answer a question, or to  
 8 | compel a party to attend their own deposition. Fed. R. Civ. P. 37(a)(3) & 37(d). But, Plaintiff  
 9 | attached a letter from Defendant Sziebert’s counsel, Gregory G. Silvey, indicating he intended to  
 10 | “work with [Plaintiff] to schedule an agreeable time” to take Defendant Sziebert’s deposition,  
 11 | and that Plaintiff had the obligation to make arrangements for the deposition in compliance with  
 12 | the Federal Rules of Civil Procedure. Dkt. 57, p. 17. As for Ms. Dixon, Plaintiff has offered no  
 13 | evidence whatsoever that Ms. Dixon is refusing to cooperate in the scheduling of her deposition,  
 14 | or otherwise refusing to attend a deposition for which she was properly subpoenaed.<sup>3</sup> To the  
 15 | extent Plaintiff is seeking to compel either Defendant Sziebert or Ms. Dixon to attend their own  
 16 | depositions, such a motion is premature.

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18 | <sup>1</sup> Galina Dixon, ARNP is a former defendant in this matter. Plaintiff’s claims against her  
 19 | were dismissed without prejudice by order of the Court on October 27, 2016. Dkt. 55.

20 | <sup>2</sup> Plaintiff indicates someone named David Dearing is in possession of the recording  
 21 | devices, and is able to bring them to the SCC. David Dearing is not a party to this case.  
 22 | Further, his relationship to the parties, his qualifications to be an impartial custodian of the tape  
 23 | recorders, his clearance to visit the SCC, and a host of other questions pertaining to his identity,  
 24 | fitness, and security are unanswered throughout Plaintiff’s briefing. To the extent Plaintiff is  
 asking the Court to permit Mr. Dearing to enter onto SCC grounds, such a request is denied.

<sup>3</sup> Though Plaintiff indicates in his motion he would like to take the deposition of Ms.  
 Dixon and Defendant Sziebert on November 30, 2016, Plaintiff does not provide any evidence he  
 has noticed the depositions of either Ms. Dixon or Defendant Sziebert as he was required to do  
 under Rule 30(b).

1 Second, Plaintiff couches his request for a tape recorder as motion to compel discovery  
2 under Federal Rule of Civil Procedure 37(a)(2); however, Plaintiff's motion cannot properly be  
3 considered a motion to compel. Plaintiff is not requesting Defendant Sziebert or Ms. Dixon be  
4 compelled to disclose facts, produce discovery, or answer deposition questions. Instead, Plaintiff  
5 is requesting the Court compel a non-party (namely, the SCC itself) to alter its security protocols  
6 to permit Plaintiff to have access to a tape recorder on SCC grounds, so that he may comply with  
7 his obligations under Rule 30 to procure some form of transcription or recording of an oral  
8 deposition. Rule 37(a)(2) does not contemplate such relief, and Plaintiff has provided no  
9 authority to the Court suggesting otherwise.

10 In any event, Plaintiff has not demonstrated his proposed relief is necessary or even  
11 appropriate. Defendant Sziebert proposed at least one less-burdensome alternative to Plaintiff's  
12 requested relief: namely, Plaintiff may conduct the deposition via telephone, with the deponent  
13 and the recording device located outside of the SCC. *See* Fed. R. Civ. P. 30(b)(4) ("the parties  
14 may stipulate—or the court may on motion order—that a deposition be taken by telephone or  
15 other remote means."). As Plaintiff indicates a tape recorder is *available*, just not *accessible* to  
16 Plaintiff while he is confined at the SCC (*see* Dkt. 57, p. 4), Defendant Sziebert's proposal would  
17 seem to adequately address Plaintiff's need to record depositions in compliance with Fed. R. Civ.  
18 P. 30.

19 Finally, Defendant Sziebert's proposed solution could have been achieved easily enough  
20 through a good faith effort to meet and confer on discovery matters. The Court notes Plaintiff did  
21 not indicate he had made arrangements for a tape recorder until he filed his motion to compel;  
22 for his part, Defendant Sziebert did not propose a telephonic deposition until he filed his  
23  
24

1 response to Plaintiff's motion. *See* Dkt. 57, pp. 14, 17. In the future, the Court directs both  
2 parties attempt a more robust discussion of discovery disputes prior to seeking judicial relief.

3 Accordingly, Plaintiff's Motion to Compel is denied.

## 4 **II. Motion for Appointment of Counsel**

5 Plaintiff also seeks an order appointing counsel, or, in the alternative, stand-by counsel.  
6 Dkt. 57, p. 4.

7 No constitutional right to appointed counsel exists in a Section 1983 action. *Storseth v.*  
8 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S.*  
9 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is  
10 discretionary, not mandatory”). However, in “exceptional circumstances,” a district court may  
11 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28  
12 U.S.C. § 1915(d)). *Rand v. Roland*, 113F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
13 *grounds*, 154 F.3d 952 (9th Cir. 1998). To decide whether exceptional circumstances exist, the  
14 Court must evaluate both “the likelihood of success on the merits [and] the ability of the  
15 [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.”  
16 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (*quoting Weygandt v. Look*, 718  
17 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts showing he has an insufficient grasp  
18 of his case or the legal issues involved and an inadequate ability to articulate the factual basis of  
19 his claims. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).

20 Here, Plaintiff argues counsel should be appointed for him due to the logistical  
21 difficulties he has encountered in attempting to conduct and record depositions. But, Plaintiff has  
22 not demonstrated this case involves complex facts or law. Further, a review of Plaintiff's  
23 pleadings, motions, and other submissions in the record reflects Plaintiff understands the legal

1 issues involved in his claim, and has been able to adequately articulate a factual basis for his  
2 claims. Accordingly, Plaintiff's Motion is denied without prejudice.

3 **III. Motion for an Extension of Time**

4 Plaintiff requests the deadline for the completion of discovery be extended to February 1,  
5 2017. Dkt. 56. Defendant Leslie Sziebert has no objection to the proposed extension. Dkt. 59.

6 After consideration of the record, Plaintiff's Motion is granted. The Amended Pretrial  
7 Scheduling Order (Dkt. 15, 36) is amended as follows:

8 (1) All discovery shall be completed by February 1, 2017.

9 (2) Any dispositive motion shall be filed and served on or before April 1, 2017.

10 The Court also notes this is Plaintiff's third request for an extension of time to complete  
11 discovery. Thus, further extensions of time to complete discovery will be granted only upon a  
12 showing of good cause.

13 Dated this 9th day of December, 2016.

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15 David W. Christel  
16 United States Magistrate Judge